



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/166377

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 18, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a notice of FoodShare overissuance and whether the Department may intercept the Petitioner's tax refund to collect an overissuance of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a November 2013 notice of FoodShare overissuance and a May 2015 tax intercept notice.
3. Petitioner was sent a Notification of FoodShare Overissuance dated November 19, 2013. The notice informed Petitioner that she had been overissued FoodShare benefits in the amount of \$2290.00 for the period from March 1, 2013 to September 30, 2013. A notice issued the same day

corrected the amount of the overissuance, changing it to \$1672.00. This is claim # [REDACTED]. The notice was sent to the correct address, the above address. This is Petitioner's mother's home.

4. Petitioner's date of birth is [REDACTED], thus she was 19 during virtually all of the overpayment period. She was also a full time student at [REDACTED] during the period of the overpayment and working more than 20 hours per week and living in her mother's home.
5. Petitioner's mother is the FoodShare case head for this overpayment and had reported that Petitioner was only working 15 hours per week which resulted in the exclusion of Petitioner from her mother's FoodShare household because as a full time student she was not working enough hours to be eligible for FoodShare. When the agency discovered that Petitioner was working more than 20 hours per week it added Petitioner back to the household and generated the November 2013 overpayment notice.
6. Petitioner's mother was sent a notice of FoodShare overissuance dated November 19, 2013 that informed her that also notified of the \$1672.00 overissuance.
7. Petitioner's mother appealed the overpayment allegation to the Division of Hearings and Appeals. A hearing was conducted on February 5, 2014 and a decision issued on February 14, 2014 that concluded that Petitioner's mother had been overissued FoodShare as alleged.
8. Petitioner was sent a tax intercept notice dated May 15, 2015 that informed Petitioner that her taxes were subject to intercept to repay a public assistance debt balance of \$1434.00.
9. This appeal was filed on May 28, 2015.
10. Petitioner's mother had been repaying this overissuance but has missed three payments.

DISCUSSION

At the outset it should be noted that all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. *FoodShare Wisconsin Handbook, (FSH), §7.3.1.2*. This explains why Petitioner received this overpayment notice as well as the case head – her mother. The language from the *FoodShare Wisconsin Handbook* states:

7.3.1.2 Liability

All adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household.

Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full.

...

FSH, §7.3.1.2.

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. *7 CFR, §273.15(g)*. Petitioner's May 28, 2015 appeal was filed about 18 months after the November 2013 overpayment notice. Thus this appeal is untimely as to that overpayment notice.

Thus appeal is, however, timely as to the tax intercept. It affords Petitioner little help here; however, as the appeal of a tax intercept cannot address issues for which there was a prior right to a hearing. *Wis. Stats., §49.85(4)*. As there was a prior right to a hearing for this overpayment this appeal of a tax intercept

cannot address the overpayment. The Department may use the tax intercept where three payments on an overpayment are missed. *FSH*, §7.3.2.12. Thus the Department may proceed with this tax intercept.

CONCLUSIONS OF LAW

That this appeal is untimely as to the November 2013 overpayment determination and that having had the prior right to a hearing there is no issue that can be resolved as to the tax intercept.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of July, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 24, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit